

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MAHATTAN DIVISION**

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x

CHRISTOPHER POLK,  
*individually, and on behalf of all others  
similarly situated,*

Plaintiff,

**Case No.: 1:21-cv-00129-PAE**

v.

DEL GATTO, INC.,

Defendant.

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x

**DEFENDANT'S NOTICE OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

**PLEASE TAKE NOTICE** that upon the accompany declaration of Joshua Opperman, the exhibits appended thereto, the accompanying memorandum of law, and upon all prior proceedings, pleadings and filings in this action, defendant Del Gatto, Inc. respectfully moves this Court, before the Honorable Paul A. Engelmayer at the United States Courthouse for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, Courtroom 1305, under Federal Rule of Civil Procedure 12(b)(1) and (6) that this Court grant defendant's motion to dismiss Plaintiff, Christopher Polk's complaint in its entirety, along with such other and further relief as the Court may deem just and proper;

**PLEASE TAKE FURTHER NOTICE** that in accordance with Local Civil Rule 6.1(b); opposing papers shall be served within fourteen (14) days after service of moving papers, and reply papers, if any, shall be served within seven (7) days after service of the opposing papers.

DATE: February 24, 2021  
Rockville Centre, New York

Respectfully submitted,

/s/ Paul M. O'Brien (PO 1990)  
Paul M. O'Brien  
Moish E. Peltz

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*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being served this 24th day of February, 2021, on all parties or counsel of record in the manner specified on the Service List below.

/s/ Paul M. O'Brien

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